CRIMINAL LAW—INDETERMINATE SENTENCE—DESIGNATION OF MAXIMUM PERIOD BY COURT.—Where the statute defining a crime fixes the maximum term of imprisonment, the designation of any other maximum by the court, when sentence is passed under the indeterminate sentence law, is *held* void, and the prisoner may be detained by the prison superintendent for the statutory maximum. *Ex Parte Duff* (1905), — Mich. —, 105 N. W. Rep. 138.

Indeterminate sentence laws have been held valid in Massachusetts, New York, Illinois and Indiana. The Kansas law is apparently constitutional. *State* v. *Tyree*, 77 Pac. 290. The Michigan law was enacted under constitutional provision for it. See 4 MICH. LAW REV. 150. It is undenied that under the law the court need not specify the maximum duration of imprisonment. *Hagenow* v. *People*, 188 Ill. 545. But if the court nevertheless does fix a maximum period other than the statutory maximum, what the effect of such judgment is has been determined for the first time by this case. The court held the sentence valid, as a sentence for the statutory maximum, but the designation of the maximum imprisonment void. The two dissenting judges deemed the fixing of the term error only, and thought that no administrative officer should be allowed to disregard or amend a judgment solemnly pronounced. But the statutory maximum is incorporated by the indeterminate sentence law into every sentence passed under it. *Commonwealth* v. *Brown*, 167 Mass. 144. And the obvious intent of the law is to take from the court the power to fix the punishment. The designation then of a maximum term other than what the statute fixes, is an act beyond the court's jurisdiction and void. The fact that the law takes this power from the court has been unsuccessfully used to prove the law unconstitutional. *Miller* v. *State*, 149 Ind. 607, 40 L. R. A. 109. The detaining officer is then expected to look to the statute, not to the judgment, for the maximum period for which he may hold the prisoner. In these aspects of the law the designation of a maximum other than the statutory maximum is surplusage that the officer may disregard. The sentence gives him authority to commit; the statute gives him power to detain. In the latter respect the law purposes to control the officer directly and not through the sentence. So if he yields the law obedience, he cannot be said to set at naught the judgment of the court.

DEEDS—EXCEPTION OR RESERVATION.—A deed conveyed a parcel of land, "excepting and reserving a strip two rods wide to be used as a right of way." The grantee was to fence this right of way into his inclosure, maintaining a gate at either end for the grantor's use. On the same day, the grantor made a conveyance of the strip to a third party, describing it as "the premises described as right of way reserved by me" in the first deed; excepting and reserving all timber thereon, with the right of the grantor to go on the land and remove it. The latter removed the timber without interference from the grantee in the first deed and the taxes on "the strip" were paid by the first grantee. *Held*, that the first deed contained an exception and not a reservation of the strip. *Pritchard* v. *Lewis et al.* (1905), — Wis. —, 104 N. W. Rep. 989.

In this case the words exception and reservation were both used, and the

question involved was whether the fee to the strip was excepted or merely a right of way reserved. The question as to whether a particular clause is an exception or a reservation is one of intention. If the language is ambiguous, parol evidence of the circumstances and collateral facts may be introduced, but if not, whatever may be the real intention, it must be gathered from the instrument alone. Whether or not the language is so ambiguous is to be decided by the court from the nature of the provision, the situation of the parties and the subject matter. *Engel* v. *Ayer,* 85 Me. 448, 452; 27 Atl. 352; *Biles* v. *Tacoma, etc., R. R. Co.,* 5 Wash. 509, 512; 32 Pac. 211. A rule sometimes resorted to in close cases is that, as every exception or reservation is the act of the grantor, it should be construed most strictly against him and most beneficially for the grantee. *Wellman* v. *Churchill,* 92 Me. 193; 42 Atl. 352. From the extrinsic facts in this case, there was no question but that all parties regarded the clause as the exception of the fee; these facts decided the case inasmuch as the court held the language ambiguous. A correct result probably, but it is noteworthy that one of the cases cited as supporting the court stands directly opposed to it in construing a very similar clause: *Fisher* v. *Laack et al.* (1890), 76 Wis. 313, 319. In this case the clause "except the south twelve feet to be used as an alley" was held plain and unambiguous, and proof of extrinsic facts was held inadmissible to contradict it or affect its construction. Although the word "except" was employed, the subject matter to which it referred was a reservation and it was so held.

DEEDS—FILLING BLANKS—AUTHORITY IMPLIED.—Where A assigned a mortgage to B and delivered the assignment to him with the name of the assignee in blank and nothing was said by A to B as to the authority to fill the blanks, and B filled the same, it was *Held,* that when one delivers an instrument, whether the same be required to be under seal or not, so executed as to, in form, give it full validity upon the filling up of the blanks, authority for the holder thereof to do that is implied. *Friend* v. *Yahr et al.* (1905), — Wis. —, 104 N. W. Rep. 997.

The rule that blanks in a deed could not be filled by a third person unless expressly authorized to do so, by writing or by parol was questioned as early as 1822 by CHIEF JUSTICE MARSHALL in the case of *United States* v. *Nelson,* 2 Brock. 64. Marshall's prophecy that the strict rule of the common law would be some day set aside is fast coming true. The principal case is in line with this tendency and goes so far as to hold that one, to whom a deed containing blanks is given, has implied authority to fill the blanks. This rule applies to deeds as well as to commercial paper. *Nelson* v. *McDonald,* 80 Wis. 605, 27 Am. St. Rep. 71, and cases there cited. This rule applies to blanks in surety bonds. *Dolbeer* v. *Livingston,* 100 Calif. 617; to an assignment of corporate stock, *Bridgeport Bank* v. *New York, etc. Ry. Co.,* 30 Conn. 231; to consideration in deeds and mortgages, *Quinn* v. *Brown,* 71 Ia. 376, 34 N. W. R. 13; *Reed* v. *Morton,* 24 Neb. 760.

EASEMENTS—ACQUISITION OF, OVER RAILROAD RIGHT OF WAY.—In a suit brought by an abutting property owner for the purpose of preventing the